

**LEGISLATIVE SERVICES AGENCY
OFFICE OF FISCAL AND MANAGEMENT ANALYSIS**

200 W. Washington, Suite 301
Indianapolis, IN 46204
(317) 233-0696
<http://www.in.gov/legislative>

FISCAL IMPACT STATEMENT

LS 6265

BILL NUMBER: SB 43

NOTE PREPARED: Mar 17, 2008

BILL AMENDED: Mar 14, 2008

SUBJECT: Environmental Matters.

FIRST AUTHOR: Sen. Gard

FIRST SPONSOR: Rep. Dvorak

BILL STATUS: Enrolled

FUNDS AFFECTED: ☒ **GENERAL**
DEDICATED
FEDERAL

IMPACT: State & Local

Summary of Legislation: *Environmental Rules.* This bill requires, with respect to environmental rules subject to automatic expiration, the Department of Environmental Management (IDEM) or the appropriate rulemaking board to publish a notice identifying which of the rules will be readopted. It requires IDEM or the board, on request of a person, to consider readoption of an environmental rule that IDEM or board proposes to allow to expire.

Solid Waste Management Districts. The bill provides that a joint solid waste management district has the power to pay a fee to a county that (1) was part of the joint district; (2) has withdrawn from the district as of January 1, 2008; and (3) has established its own district in which a final disposal facility is located.

Storm Water Management. The bill establishes procedures to prevent a county department of storm water management and a municipal works board from imposing fees in the same area for storm water management.

Qualifications of Mediators. This bill provides that a person must be qualified as a mediator under Indiana Supreme Court Rules to serve as a mediator in an administrative proceeding unless the parties and the administrative law judge agree to a mediator who is not qualified as such.

Laboratory Division. This bill eliminates the requirement for IDEM to include a laboratory division.

Landfills. The bill provides that for a landfill that is not exempt from demonstration of need requirements in a county that does not zone, an applicant that has an application pending on April 1, 2008, for an original permit for construction or operation and that meets certain other conditions must submit a new permit application and meet the requirements of all applicable environmental laws existing at the time the new

permit is sought. The applicant is not required to pay a new application fee, and the county executive must approve the proposed facility location for an application for an original construction permit submitted to the IDEM after March 31, 2008. In a county that zones, a person holding a permit for construction of a landfill that has not accepted waste and for which zoning was approved before April 1, 1985, may begin or complete construction only if the zoning authority reviews and approves the appropriateness and legality of the zoning under current law.

Wastewater Operator Certificate. This bill eliminates the requirement for certain water and wastewater operators to display certificates.

Wastewater Management Vehicle. This bill provides that a wastewater management vehicle must have an identification number issued by IDEM instead of a license. It provides that IDEM may issue a wastewater management permit that incorporates issuance of a wastewater management vehicle identification number and approval of a land application site.

Waste Permits. This bill eliminates the requirement for an applicant for certain waste permits to include the applicant's Social Security number in the application disclosure statement. It allows IDEM to require additional information in the application.

Mercury Switch Removal Program. The bill states the purposes of the program; requires IDEM to pay recyclers for removed anti-lock braking system G-force sensors and other components containing more than 10 milligrams of mercury; and provides that the mercury switch removal requirement does not apply if the removal would require dismantling of the vehicle.

Underground Storage Tanks (USTs). It allows IDEM to use money in the Underground Petroleum Storage Tank Excess Liability Trust Fund for the inspection of underground storage tanks and limits the combined amount of payments from the fund in a year for tank inspection and administration of claims against the fund to 10% of the fund income in the immediately preceding year.

Electronic Submission of Information. The bill establishes standards for electronic submission of information to IDEM.

Environmental Crimes. This bill repeals environmental crimes statutes, and substitutes a statute that (1) designates environmental violations as crimes; (2) establishes more severe penalties if the violation results in substantial harm to the environment or loss of human life; (3) establishes factors to be considered in sentencing; (4) establishes maximum and minimum fines; and (5) provides that the crimes are not subject to imprisonment. It reduces from a Class D felony to a Class B misdemeanor the penalty for offenses concerning: (1) destruction, alteration, concealment, or false certification of a record; (2) rendering inaccurate or inoperative a recording device or a monitoring device; and (3) falsifying testing or monitoring data. The bill provides that criminal penalties apply regardless of whether a person uses electronic submissions or paper documents to accomplish the criminal actions.

Environmental Crimes Task Force. The Task Force is extended for one year.

Effective Date: Upon passage; July 1, 2008.

Explanation of State Expenditures: *Environmental Rules.* IDEM should be able to publish a notice identifying which of the rules will and will not be readopted given its existing level of resources. IDEM

would also have the budget and resources to consider readoption of rules. For FY 2007, IDEM reverted \$2.7 M to the state General Fund.

Qualifications of Mediators. This bill specifies qualifications for mediators unless the parties and the administrative law judge agree to a mediator who is not qualified as such. This provision could expand the pool of potential mediators. The proposal is not expected to have a significant impact on expenditures of the Office of Environmental Adjudication (OEA). OEA considers about 250 cases on average each year; 150 are adjudicatory. Approximately 40 cases require a hearing.

Laboratory Division. This bill eliminates the requirement for IDEM to include a laboratory division. This provision should have no impact because IDEM does not have a laboratory division. IDEM requires laboratory analysis of soil, drinking water, stream water, monitoring wells, and some air monitoring samples. IDEM contracts with the State Department of Health (ISDH) for some testing. The agency contracts with private labs for specialized sampling that the state does not have equipment to provide. IDEM spends \$1.5 - \$2 M per year for water and land testing. The Laboratory Division was required by statute in 1986, and it developed into an office within the agency. It was disassembled in the late 1980s or early 1990s. Testing has been handled by contracts for most of the time since then. Elimination of the statutory requirement for the division will make statute reflect current agency structure.

Mercury Switch Removal Program. Since February 2007, Indiana has collected 5,527 switches equating to 12.16 pounds of mercury. According to the End of Life Vehicle Solutions organization, 399 of Indiana's 788 potential vehicle recyclers have participated in the program. End of Life Vehicle Solutions (ELVS), an organization formed by auto manufacturers who used mercury switches, provided the plan for mercury recovery in Indiana. ELVS contracts with a mercury retorter to properly handle the collected switches. The number of ABS sensors and other components that will be recycled is unknown. IDEM anticipates paying \$3 per switch and \$5 per ABS assemblies, which contain multiple mercury pellets. Other components have been added in anticipation of future activities. Payments for switches are paid from the Solid Waste Management Fund. The statute leaves the funding levels to the discretion of the Commissioner to protect fund solvency. The proposal does not change the Commissioner's discretion for payment amounts.

USTs. It allows IDEM to use money in the Underground Petroleum Storage Tank Excess Liability Trust Fund (ELTF) for the inspection of USTs and limits the combined amount of payments from the fund in a year for tank inspection and administration of claims against the fund to 10% of the fund income in the immediately preceding year. Currently, IDEM inspects approximately 900 USTs per year with 5 inspectors. There are a total of 4,200 USTs registered in Indiana. The current program uses \$600,000 annually from the Petroleum Trust Fund and an additional \$400,000 from federal funds (EPA) to conduct the inspections. For FY 2006 and FY 2007, the fund generated around \$50 M from annual registration fees paid by owners of USTs. Given this figure, limiting inspection and administration payments to 10% of the income would limit expenditures to \$5 M.

The Federal Energy Policy Act of 2005 requires that USTs be inspected at least once every three years and adds other environmental inspection requirements to the inspection process. IDEM will be required to inspect 1,400 USTs per year in order to keep the current federal funding. The additional inspections are expected to cost about \$600,000 per year in Indiana funds. By using the ELTF for the additional inspection expenses, IDEM could hire three additional inspectors to meet the inspection requirements.

Increasing inspection levels and meeting federal program inspection standards will insure that Indiana will keep the federal match for the entire UST (\$400,000) and also for the Leaking UST program (\$1.5 M),

totaling \$1.9 M. Improving the compliance program through inspections could also reduce the claims on ELTF through earlier detection of leaks.

As of December 31, 2007, ELTF had a balance of \$1.4 M. The Petroleum Trust Fund had a balance of about \$16,000.

Electronic Submission of Information. Electronic submission is a voluntary option. Consequently, how many regulated entities will take advantage of electronic applications and report submissions is indeterminable.

IDEM receives about 57,275 reports and applications a year. Some reports consist of 200 pages each, making the total paper processed by IDEM much higher. The bill aligns IDEM's electronic reporting requirements with EPA requirements. No reduction in expenditures will be realized until EPA approves the state's electronic signature protocol. Once approved, IDEM may implement the necessary technology, and businesses may begin using electronic submissions.

System upgrades will be required to receive electronic submissions. IDEM is in the first year of a four-year system upgrade that will allow for improved efficiency and eventually cost reductions in data input expenses by accepting electronic reports. Some manual data entry will be eliminated. The cost of the upgrade is \$5 M; however, this figure includes technology purchases needed beyond the electronic reporting improvements. IDEM's technology upgrade expenses are being covered through appropriations enacted in the 2007 budget bill.

Wastewater Management Vehicle. This bill provides that a wastewater management vehicle must have an identification number issued by IDEM instead of a license. IDEM may issue a wastewater management permit that incorporates issuance of a wastewater management vehicle identification number and approval of a land application site. The provision could reduce administrative expenditures for IDEM to the extent that this provision will eliminate duplication of paperwork and simplify permitting for wastewater haulers. Rather than issuing a separate permit, license, and approval, an identification number combines all under one function, reducing paperwork. The overall saving is not expected to be significant although efficiency should be improved. Moving to one identification number will reduce multiple steps for agency staff and the permitted entity.

Waste Permits. This bill eliminates the requirement for an applicant for certain waste permits to include the applicant's Social Security number in the application disclosure statement. It allows IDEM to require additional information in the application. This provision will have no significant fiscal impact. The elimination of the Social Security number is a security precaution.

Landfills. This provision will not result in a significant impact on IDEM.

Environmental Crimes. The overall impact is not expected to be significant because the majority of environmental violations are handled through civil enforcement means. Criminal prosecutions are rare.

Environmental Crimes Task Force. Extending the task force for one year will result in an additional expenditure of no more than \$16,500, depending upon how often the task force meets. In 2007, the task force met one time and expended less than \$1,000. Expenses of the task force are paid from appropriations made to the Legislative Council or to the Legislative Services Agency (LSA). LSA is to provide the staff for the task force.

Explanation of State Revenues: *Environmental Crimes.* If additional court cases occur and fines are collected, revenue to both the Common School Fund (from criminal fines) and the state General Fund (from court fees) would increase.

The court may order a person convicted of certain Class D felonies to pay a fine of at least \$5,000 and not more than \$50,000 for each day of violation. If the person has a prior unrelated conviction for an offense that may be punished as a felony, a fine of at least \$5,000 but not more than \$100,000 for each day of violation. The person is not subject to imprisonment for the crime.

Certain Class C misdemeanors may be punished by a fine of at least \$5,000 per day for each violation and not more than \$25,000 per day for each violation. The person is not subject to imprisonment for the crime.

Some violations may be punished by a fine of at least \$5,000 but not more than \$10,000 per day for each instance of a violation. In either case, the person is not be subject to imprisonment.

A person who is convicted of a Class B misdemeanor may be punished by a fine of at least \$5,000 per day for each violation and not more than \$25,000 per day for each violation. The person is not subject to imprisonment for the crime.

However, any additional revenue would likely be small. Criminal fines are deposited in the Common School Fund. Additional revenues that would be generated by the fines would be based on violations.

Explanation of Local Expenditures: *Solid Waste Management Districts.* This provision allows a qualifying district to pay fees to a county. It is anticipated that the impact will be significant only to two possible districts.

Wastewater Operator Certificate. This bill eliminates the requirement for certain water and wastewater operators to display certificates. This provision will have no impact. Wastewater operators often manage multiple facilities.

Explanation of Local Revenues: *Storm Water Management.* Local units, if any, that are imposing fees on the same area could lose revenue. If the provision encourages local units to agree on fees in the future, then future revenue streams should not be affected. However, if local units cannot agree, then units may lose revenue. The impact will depend on local action.

Solid Waste Management Districts. This provision could increase revenue to the county by an indeterminable amount. The impact will depend on local action for a limited number of districts.

Environmental Crimes. If additional court actions occur and a guilty verdict is entered, local governments would receive revenue from court fees. However, the amounts would likely be small.

State Agencies Affected: Department of Local Government Finance (DLGF); LSA; Department of Correction; IDEM.

Local Agencies Affected: County departments of storm water management and municipal works boards; civil taxing units and school corporations; trial courts, local law enforcement agencies..

Information Sources: IDEM.

Fiscal Analyst: Bernadette Bartlett, 317-232-9586.